Bennington Iron Works, Inc. *and* United Steelworkers of America, AFL-CIO-CLC, Local Union No. 8217. Case 1-CA-16581

29 September 1983

DECISION AND ORDER

BY CHAIRMAN DOTSON AND MEMBERS ZIMMERMAN AND HUNTER

On 28 August 1980 Administrative Law Judge Richard L. Denison issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief, and the General Counsel filed limited exceptions and a supporting brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings,[1] and conclusions of the Administrative Law Judge only to the extent consistent herewith.

The pertinent facts are as follows. Respondent and the Union have been parties to a series of collective-bargaining agreements since 1972 and the most recent agreement expired on 10 September 1979.[2] The bargaining unit represented by the Union includes both Respondent's rank-and-file employees and its subforemen who are statutory supervisors.

On 16 July rank-and-file employee David Jones circulated among the employees a petition stating that the employees no longer wished to be represented in collective bargaining by the Union and 10 out of the total of 19 rank-and-file employees in the unit signed the petition. On 17 July Arnold G. Blackstone, Respondent's vice president, informed Richard P. Wildes, the Union's International representative, that Respondent intended to terminate the collective-bargaining agreement on its expiration date, 30 September, and that it did not intend to negotiate a successor agreement since the employee petition indicated that the employees no longer wished to be represented by the Union. Respondent reiterated its position to the Union on 31 July. Thereafter, on 1 October, Respondent announced and implemented various changes in wages, hours, and working conditions without prior notice to or bargaining with the Union.[3] The complaint alleges, *inter alia*, that Respondent violated Section 8(a)(5) of the Act by rejecting the Union's requests to bargain, withdrawing recognition from the Union, and by announcing and implementing unilateral changes in employees' wages, hours, and working conditions.

The Administrative Law Judge, citing, *inter alia*, *Terrell Machine Co.*, 173 NLRB 1480, 1481 (1969), noted that a certified union, upon expiration of the first year following certification, enjoys a rebuttable presumption that its majority representative status continues. The Administrative Law Judge further noted that an employer may rebut the presumption by establishing that its refusal to bargain with a union is predicated on a good-faith and reasonably grounded doubt of the union's majority status.

The Administrative Law Judge concluded that Respondent here had not rebutted the presumption based on his finding that "Respondent's doubts about the Union's majority status were raised, in the context of unfair labor practices." In this regard, the Administrative Law Judge found that Denofrio, a supervisor-member of the bargaining unit, interrogated certain unit employees and made disparaging statements in their presence concerning the Union prior to and during the solicitation of signatures on the petition.

The Administrative Law Judge additionally found that, through conversations between Denofrio and Blackstone, the latter encouraged, authorized, and ratified Denofrio's, conduct and that, under the principles of *Montgomery Ward & Co.*, 115 NLRB 645, 647 (1956), Respondent was responsible for Denofrio's statements. The Administrative Law Judge therefore concluded that Denofrio's statements violated Section 8(a)(1) of the Act. The Administrative Law Judge also concluded that in view of this unlawful conduct Respondent was precluded from raising an asserted doubt of the Union's continued majority status and that its refusal to bargain with the Union and its subsequent unilateral changes in employees' wages, hours, and working conditions violated Section 8(a)(5) and (1) of the Act.

Contrary to the Administrative Law Judge, we do not find that the facts here establish that Respondent was responsible for Denofrio's conduct under *Montgomery Ward* and we therefore further

[1] The General Counsel and Respondent have excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

[2] All dates hereinafter refer to 1979.

[3] In its answer to the complaint Respondent admits that on 1 October it unilaterally announced and implemented the following changes in wages, hours, and working conditions: a dental plan; personal days based on length of employment; a 7-1/2-percent pay raise; a merit system for raises; a credit union; and a profit-sharing plan.

find that Respondent was not precluded from raising an asserted doubt concerning the Union's continued majority status.

It is a settled principle that the Act proscribes an employer or its agents from soliciting employee support for an antiunion petition. However, in *Montgomery Ward* and its progeny, the Board held that a supervisor who is a member of the bargaining unit is regarded by employees as one of themselves rather than as a representative of management. Accordingly, the Board has generally refused to hold an employer responsible for the antiunion conduct of such a supervisor absent evidence that the employer encouraged, authorized, or ratified the supervisor's activities or acted in such a manner as to lead the employees to reasonably believe that the supervisor was acting on behalf of management.

While the evidence here reflects that supervisor and bargaining unit member Denofrio solicited employee support for the antiunion petition, we are not persuaded that Respondent encouraged, authorized, or ratified Denofrio's activities or led the employees to believe he was acting on behalf of management. Thus, the evidence indicates only that prior to the date the petition circulated Denofrio had expressed to Blackstone his own dislike of having 2 hours of his wages per month deducted and remitted to the Union and that he had also spoken to Blackstone about what the employees thought concerning the Union. Additionally, Denofrio testified that he "probably mentioned" to Blackstone that "a petition was contemplated" and Blackstone testified that rank-and-file employee Jones was mentioned as being the person who was thinking about circulating the petition. We note, however, that Denofrio never informed Blackstone that he intended to become involved in the circulation of the petition or of his subsequent conduct in support of the petition. Thus, while Respondent, through Blackstone, may have been aware that some employees were not satisfied with the Union, there is nothing in the record to indicate that Respondent was aware of Denofrio's role in circulating the petition. Nor did Blackstone ever expressly or impliedly request that Denofrio participate in circulating the petition. Further, we note that there is no evidence that Respondent engaged in any conduct which would lead employees to reasonably believe that Denofrio was acting at Respondent's request or on its behalf, nor any showing that Respondent, through any other officials, engaged in conduct similar to Denofrio's. Lastly, there has been no showing here that any rank-and-file employee was even aware of the conversations between Blackstone and Denofrio. In these circumstances, the Administrative Law Judge's conclusion that Respondent encouraged, authorized, or ratified Denofrio's conduct is based on mere speculation. Therefore, even assuming, *arguendo*, that Denofrio's interrogation of employees and his disparaging statements concerning the Union were coercive, the record is insufficient to support a finding that Respondent is responsible for Denofrio's conduct within the meaning of *Montgomery Ward*, and we conclude that no violation of the Act was committed by Respondent through Denofrio's activities.

Respondent's doubts about the Union's majority status were therefore not raised in the context of unfair labor practices. As has already been noted, a majority of the rank-and-file bargaining unit employees signed the July 16 petition and the parties additionally stipulated at the hearing that Respondent had also received oral representation from the supervisor-members of the bargaining unit that they did not wish to be represented by the Union. Furthermore, at the hearing, the parties stipulated that Respondent had a good-faith doubt that the Union was the majority representative of the unit employees if such doubt were not unlawfully tainted by the statements allegedly made by Phillip Denofrio. We therefore find that Respondent had an asserted doubt based on objective considerations of the Union's continued majority status when it refused to bargain with the Union. Accordingly, we conclude that Respondent did not violate Section 8(a)(5) and (1) when it rejected further bargaining with and withdrew recognition from the Union on July 17, and when it thereafter unilaterally implemented changes in employees' wages, hours, and working conditions. We shall therefore dismiss the complaint in its entirety.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the complaint be, and it hereby is, dismissed in its entirety.

DECISION

STATEMENT OF THE CASE

RICHARD L. DENISON, Administrative Law Judge: This case was heard at Bennington, Vermont, on March 19 and 20, 1980, based on a charge filed by United Steelworkers of America, AFL-CIO-CLC, Local Union No. 8217, on September 19, 1979.[1] The complaint, issued

[1] All dates are in 1979 unless otherwise specified. Counsel for the General Counsel's and counsel for Respondent's joint motion to correct the transcript, being unopposed, is granted.

March 19, 1980, alleges that the Respondent, Bennington Iron Works, Inc., violated Section 8(a)(1) of the Act since about March 19 by interrogating employees concerning whether or not they had signed a petition rejecting further representation by the Union, and by promising employees more money and benefits to abandon their duly certified collective-bargaining representative. It is further alleged that the Respondent violated Section 8(a)(5) and (1) of the Act by rejecting the Union's July 26 and August 7 requests to bargain, withdrawing recognition from the Union about July 17 and 31, and by announcing and implementing unilateral changes in employees' wages, hours, and working conditions about October 1. The Respondent's answer, as amended at the hearing, admits the announcement and implementation on October 1 of the changes in employee benefits specified in the complaint, and that said changes were made without prior notice to or bargaining with the Union. The Respondent's answer also denies the allegations of unfair labor practices alleged in the complaint.

Upon the entire record in the case, including my observation of the witnesses and consideration of the briefs, I make the following:

FINDINGS OF FACT

I. JURISDICTION

The complaint alleges and the answer admits that at all times material herein the Respondent is, and has been, a Vermont corporation with its principal office and place of business in Bennington, Vermont, where it is now, and has been, continuously engaged in the manufacture, sale, and distribution of fabricated steel parts. In the course and conduct of its business operations, the Respondent causes and continuously has caused, at all times material herein, large quantities of metal, used by it in the fabrication of parts, to be purchased and transported in interstate commerce from and through various states other than the State of Vermont. Likewise, the Respondent causes, and continuously has caused, substantial quantities of fabricated parts to be sold and transported from its Bennington, Vermont, plant in interstate commerce to points outside the State of Vermont. The Respondent annually sells and ships from its Bennington, Vermont, plant products, goods, and materials valued in excess of $50,000 directly to points outside the State of Vermont. During the same period of time the Respondent purchases and receives at its Bennington, Vermont, plant products, goods, and materials valued in excess of $50,000 directly from points outside the State of Vermont. The Respondent is and has been at all times material herein an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. LABOR ORGANIZATION

United Steelworkers of America, AFL-CIO-CLC, Local Union No. 8217, hereafter referred to at times as the Union or the Charging Party, is a labor organization within the meaning of Section 2(5) of the Act.

III. SUPERVISORY STATUS

At the hearing the parties entered into a stipulation concerning the status of the Respondent's four subforemen, all members of the collective-bargaining unit.[2] Pursuant to that stipulation, I find that Phillip "Chick" Denofrio, Steve Loftis, Greg Wright, and Lee Watters, each had the authority to assign work, transfer employees temporarily from one job assignment to another, and otherwise responsibly direct employees' work, utilizing, at times, independent judgment in the exercise of these powers. They do not have the authority to hire, suspend, lay off, recall, promote, discharge, reward, discipline, adjust grievances, or effectively recommend such action. The hourly paid subforemen punch a timeclock and receive overtime pay, as do the other employees, but, in addition, are paid $1 per hour more than the employees who work under their direction. On the basis of these stipulated facts the parties further stipulated that, at all times material herein, the subforemen were supervisors within the meaning of the Act, and therefore, I find that the subforemen are and have been, at all times material herein, supervisors within the meaning of Section 2(11) of the Act.

IV. THE UNFAIR LABOR PRACTICES

The Respondent and the Union have been parties to a series of collective-bargaining agreements dating back to the Union's initial certification by the Board on November 20, 1972. The last contract was a 3-year agreement which expired on September 30. On July 16, rank-and-file employee David Jones signed and circulated among the employees a petition stating that they "no longer wished to be represented in collective bargaining by Local #8217." Nine other employees' signatures appear on the petition circulated by Jones during working hours.[3]

At the hearing in this matter the parties stipulated as follows:

> The employer received oral representations from the sub-foreman that they did not wish to be represented by the Union, and also received a petition listed as Joint Exhibit 3. As of July 16, 1979, there were 19 persons on the production payroll, plus the 4 sub-foremen. Two of the 19 men were not actively employed by the Company at the relevant time, having been out on extended disability leave. One of these two men eventually returned to work at the Company, the other did not.

On July 17 Arnold G. Blackstone, Respondent's vice president, wrote a letter to Richard P. Wildes, the Union's International representative, stating that the

[2] The unit description set forth in the Certification of Representative is:

> All production and maintenance employees, including truck drivers, employed by the Employer at its Harmon Road, Bennington, Vermont location, but excluding all foremen, clerical employees, and guards and supervisors as defined in the Act.

[3] Early in 1980 Jones was promoted to subforeman over the miscellaneous shop.

Company intended to terminate the collective-bargaining agreement at midnight September 30, and "because a majority of employees have indicated to the Company that they no longer wish to be represented by the United Steelworkers of America, we do not intend to negotiate a successor agreement." On July 26 the Union's subdistrict director, Edward Roukema, wrote to the Company and expressed the Union's desire to terminate the contract and to meet and negotiate a new agreement. On that same date Roukema also sent written notice to the Federal Mediation and Conciliation Service and the State of Vermont Department of Labor and Industry. On July 31, in a letter from Blackstone to Roukema, the Company expressed its belief that "any negotiations are no longer appropriate" on the basis of an enclosed copy of Blackstone's July 17 letter to Wildes.

At the hearing, the parties further stipulated:

> However, the sub-foremen were members of the bargaining unit represented by the Union. The employer has a good faith doubt that the Union was the majority representative at Bennington Iron Works, if such doubt were not unlawfully tainted by the statements allegedly made by Phillip Denofrio as alleged in Paragraph 8 of the complaint.

Thus, the focal point of this case is the testimony by five rank-and-file employee witnesses for the General Counsel and one of Respondent's foremen, for the Respondent, who was a rank-and-file employee at the time of the events in question. Their testimonies concerning Denofrio's remarks are unrefuted since Phillip Denofrio did not testify, although he is still employed as a subforeman by the Respondent and was present at the hearing during the testimony of at least one of the General Counsel's witnesses.

Willie Scott, a fabricator welder employed by the Respondent for over 10 years and president of the Local Union, credibly testified that on July 20 "Chick" Denofrio discussed the Union with him and a group of employees, including David Jones, Robert Grandchamp, "R. W.," and "most of the shop employees," in the structural steel department at one end of the shop. When Scott arrived Jones and Denofrio were already talking, and Jones was stating that "the Union would be better gone. The Company wouldn't sit down and talk with us as a union." He also stated that the Company would talk to each individual. Denofrio agreed, adding that "we would have more money without a union than we would with a union," and "it would be better off with the Union gone." Denofrio added that the Union never did anything for him, and that he would have more money if he were not in the Union.[4]

William Frost, a 6-year employee, heavy equipment driver, and vice president of the Union, testified that he was present and heard three separate conversations between Denofrio and fellow employees. Only with respect to the second of these conversations was Frost able to specify an approximate date, which was either July 16 or 17, or, as Frost related it, "on the day of the petition or the day after." The only other reference to a date in the course of Frost's testimony was the time span of "late in June and early July," upon which I do not rely because it was supplied to Frost by a leading question by counsel for the General Counsel. Thus, there is nothing in Frost's credible testimony to prove that any of the conversations he related occurred before the circulation of the petition. According to Frost, "one time" Denofrio stated to a group of employees, including Frost, Scotty Elwell, Jimmy Ordway, and Robert Grandchamp, that Company President Bernard Cohen "will give us a better deal. He is willing to give us more money and things like that." On the day the petition was circulated, or the day after, Denofrio asked Frost if he had signed it. When Frost, who had not seen the petition, asked what petition Denofrio referred to, Chick answered that it was a petition going around to get rid of the Union. Denofrio stated, "The majority signed it, and we only need the majority to get rid of the Union." The third conversation occurred "one time" after the second one described above, when in the presence of Eugene McCleary, Denofrio told Frost Cohen was going to give them more money and more benefits, and that he wanted to get rid of the Union. He said that no one would give them a better deal. At one point during these conversations Denofrio commented that he was sick of paying dues for nothing.

Robert Grandchamp, a layout man in the structural department under Denofrio and treasurer of the Union, testified that he first saw the employee petition on July 16, and thereafter was present during various conversations between Denofrio and fellow employees. Aside from Grandchamp, those present were William Frost, Eugene McCleary, Ray Crocker, and Richard Carron. On one such occasion, when Frost was present, Denofrio stated he did not like paying union dues, the Union had not done anything for him, and he thought they could do better with Bernie Cohen. In one of these conversations Denofrio told Grandchamp, "Well, I have been paying union dues for 7 years, and I ain't got a penny out of it yet."[5]

Cecil Pratt, formerly employed by the Respondent as a painter in the summer of 1979, testified that he did not know the date on which he signed the petition for David Jones. According to Pratt, during the period of time before the petition was signed, while having coffee with Denofrio, Rick Carron, and Subforeman Lee Watters before starting work in the morning, Denofrio and Watters would argue "What is the sense of having a union?

[4] Counsel for the Respondent attempted to impeach Scott by conclusionary questions based on Scott's affidavit suggesting that Denofrio's statements during this conversation were different from what Scott related in this direct testimony. It was then that Scott agreed that Denofrio stated that the Union never did anything for him and that he would have more money if he were not in the Union. A close reading of Scott's testimony convinces me, and I find, that Scott did not contradict himself on cross-examination, but instead related remarks made by Denofrio in addition to those repeated during his direct examination.

Scott also mentioned another conversation in the paint area involving himself, Denofrio, and other employees. I make no findings based on this conversation, since Scott testified that he did not hear what Denofrio was saying at that time.

[5] I credit Grandchamp's testimony, although it is clear from the record that he could recall only the highlights of the various conversations with Denofrio in which he was involved, since the statements he attributed to Denofrio comport with the more detailed testimony of witnesses who displayed better memories.

You pay $10 a month and don't get nothing out of it." At another time, after the petition had been circulated, when Pratt and Ray Crawford were returning to their work area after the 2:30 p.m. break, Denofrio summoned them to where he was standing, and asked Crawford, who had not signed the petition, "How come you don't want to vote the Union out? They just take your money. You don't never see nothing." Crawford responded that he was there before there was a union, and knew what it was like. The conversation concluded with Crawford stating that he did not want to talk about the matter.[6]

Thomas Walwork, a welder in the beam department under Denofrio during the period in question, testified that he had a conversation with Denofrio, alone, in which Walwork was asked what his thoughts were about the Union. Walwork responded that he had always been a member in good standing, to which Denofrio answered that he thought Cohen would give them a better deal than the Union could negotiate for them. I credit his testimony.[7]

Eugene McCleary, a foreman and witness for the Respondent, testified that during the summer of 1979 he worked under Denofrio in the structural department as a layout man. McCleary credibly testified that during this period he participated in two or three conversations involving Denofrio in which the subject of the Union was discussed. Aside from remembering that these discussions occurred during the summer, McCleary was unable to pinpoint the time, but expressed the belief that to the best of his knowledge they occurred after the employee petition had been circulated, since "It seems to me that that is what provoked a lot of the conversations." According to McCleary, Denofrio would open the conversations by questioning him about how he felt concerning unions, and, after McCleary expressed his opinion, Denofrio would state that he was getting very tired of paying dues for something from which he was not getting any benefits. He insisted the employees would be better off without a union. Denofrio never stated that he was speaking on behalf of the Company when he made these remarks. Although McCleary did not deny that Denofrio mentioned Company President Cohen's name, he stated that he did not remember Denofrio referring to Cohen in his presence. McCleary testified that these remarks were made in the context of breaktime conversation involving himself, Denofrio, and other unnamed employees.

The Respondent's answer admits that on October 1 (the day following the expiration date of its most recent contract with the Union) it announced and implemented at its Bennington plant the following changes in wages, hours, and working conditions: a dental plan, personal days based on length of employment, a 7-1/2-percent pay raise, a merit system for raises, a credit union, and a profit-sharing plan. All of these changes were made without prior notice to or bargaining with the Union.

In the case of *Terrell Machine Co.*, 173 NLRB 1480, 1481 (1969), the Board reasserted the applicable legal principles governing situations where an employer asserts a good-faith doubt of a union's continued majority status. The Board stated:

> It is well settled that a certified union, upon expiration of the first year following its certification, enjoys a rebuttable presumption that its majority representative status continues. This presumption is designed to promote stability in collective-bargaining relationships without impairing the free choice of employees. Accordingly, once the presumption is shown to be operative, a *prima facie* case is established that an employer is obligated to bargain and that its refusal to do so would be unlawful. The *prima facie* case may be rebutted if the employer affirmatively establishes either (1) that at the time of the refusal the union in fact no longer enjoyed majority representative status; or (2) that the employer's refusal was predicated on a good-faith and reasonably grounded doubt of the union's continued majority status. As to the second of these, i.e., "good faith doubt," two prerequisites for sustaining the defense are that the asserted doubt must be based on objective considerations and must not have been advanced for the purpose of gaining time in which to undermine the union. [Citations omitted.]

The Board further emphasized in *Nu-Southern Dyeing & Finishing*, 179 NLRB 573, fn. 1 (1969), that an employer's assertion of a good-faith doubt, in these circumstances, must be "raised in a context free of unfair labor practices." It is undisputed, indeed stipulated, that as of July 17, when the Respondent sent its letter terminating the collective-bargaining relationship effective on the expiration of the labor agreement, objective considerations existed, since 10 out of a total of 19 rank-and-file employees in the unit had signed the July 16 petition rejecting further representation by Local #8217. The authenticity of this petition is not in issue. In addition, as stipulated by the parties, the Respondent had received oral representations from the four subforemen in the bargaining unit to the effect that they no longer wished to be represented by the Union. Thus, I find that the first prerequisite specified by the Board had been satisfied at the time Respondent sent its July 17 letter.

There remains for consideration, as the crucial question in this case, whether or not the Respondent had a good-faith doubt raised in the context of surrounding circumstances free from unfair labor practices. In order to resolve this issue, two preliminary and directly related subissues must be decided. The first of these is whether or not the statements made by the subforemen to rank-and-file employees in the bargaining unit constitute the

[6] Counsel for the Respondent attempted to suggest that Pratt was biased against the Respondent because he quit the Company's employ shortly after a disagreement with Denofrio at the 1979 Christmas party. Pratt, who exhibited a good ability to remember details, displayed no hostility toward the Respondent while testifying about the events which transpired surrounding his signing of the employee petition. I am persuaded that he told the truth to the best of his ability, and credit his testimony.

[7] Walwork did not specify a date for this conversation, although he responded in the affirmative to counsel for the General Counsel's leading question which suggested that the conversation occurred "approximately the end of June." I therefore find Walwork's answer to this question to be unreliable. Since Walwork was hired the day following Memorial Day 1979, it is clear only that the conversation occurred subsequent to that time.

type of conduct which under applicable Board decisions has been held to be interference, restraint, and coercion within the meaning of Section 8(a)(1) of the Act. The second subissue is whether or not, in view of the fact that the subforemen are in the bargaining unit, the Respondent is responsible for the statements of these supervisors and thereby violated Section 8(a)(1) of the Act. The unrefuted testimony of witnesses Willie Scott, William Frost, Robert Grandchamp, Cecil Pratt, Thomas Walwork, and Eugene McCleary, summarized earlier in this Decision, shows that these rank-and-file bargaining unit employees were interrogated by Denofrio, who enticed the employees to reject the Union by stating that President Cohen would give them a better deal than the Union could negotiate, including a flat statement that Cohen wanted to satisfy the employees and would give them more money. Denofrio also disparaged the Union by stating that the Union had never done anything for him, and that he had been paying union dues for 7 years and had not received a penny out of it yet. In a superabundance of cases defining conduct constituting interference, restraint, and coercion within the meaning of Section 8(a)(1) of the Act, the Board has long held statements of this type by supervisors to be prohibited conduct. Accordingly, I find that Denofrio's statements, summarized above and set forth in paragraph 8 of the complaint, constitute interference, restraint, and coercion within the definition of Section 8(a)(1) of the Act.

In the leading case of *Montgomery Ward & Co.*, 115 NLRB 645, 647 (1956), the Board stated:

> Statements made by a supervisor violate Section 8(a)(1) of the Act when they reasonably tend to restrain or coerce employees. When a supervisor is included in the unit by agreement of the Union and the Employer and is permitted to vote in the election, the employees obviously regard him as one of themselves. Statements made by such a supervisor are not considered by employees to be the representations of management, but of a fellow employee. Thus, they do not tend to intimidate employees. For that reason, the Board has generally refused to hold an employer responsible for the antiunion conduct of a supervisor included in the unit, in the absence of evidence that the employer encouraged, authorized, or ratified the supervisor's activities or acted in such a manner as to lead employees reasonably to believe that the supervisor was acting for and on behalf of management. [Footnote omitted.]

This principle has been reaffirmed by the Board in a long line of decisions.[8]

The Respondent urges that Phillip Denofrio's remarks to employees were made without the knowledge, authorization, or ratification of the Respondent, and therefore the Respondent cannot be held accountable for these remarks, even if they are otherwise violations of Section 8(a)(1) of the Act. I disagree. Although Arnold Blackstone, Respondent's vice president of administration, testified that neither he nor any member of management authorized Denofrio to make any statements on the union situation and that the first time he became aware of these statements was during the NLRB investigation, he admitted having had contacts with Denofrio in the plant, during which Denofrio expressed his feelings from time to time about the Union. Furthermore, Denofrio talked to Blackstone about his dislike of having 2 hours of his wages per month deducted and remitted to the Union for things he felt had been given him by the Company rather than achieved as the result of union negotiations. Denofrio said he had gone to some of the union meetings and, in connection with his expressed dissatisfaction, "probably mentioned" to Blackstone that "a petition was contemplated." He also talked with Blackstone about what the employees thought concerning the Union, although Blackstone could not remember the names of the specific employees mentioned. Blackstone testified that the subject of employees' opposition to the Union was discussed, and that David Jones' name was mentioned as being the person who was thinking about circulating the petition. It is clear from Blackstone's testimony, as summarized above, that these conversations with Denofrio occurred in connection with the genesis of the employee petition before the petition was actually circulated, since Blackstone referred to the petition as "contemplated" and that David Jones was "thinking about circulating the petition." Thus, Blackstone's testimony persuades me, and I find, that Blackstone through Denofrio was closely associated with the petition's inception and through these discussions engaged in conduct the effect of which was to encourage, authorize, and ratify Denofrio's activities thereby leading employees reasonably to believe that Denofrio was acting for and on the behalf of management, within the meaning of the Board's *Montgomery Ward* test. I therefore find that the Respondent is responsible for Denofrio's conduct as a supervisor and agent within the meaning of the Act, and thus violated Section 8(a)(1) of the Act as alleged in paragraph 8 of the complaint.

Since the testimony of the rank-and-file employee witnesses establishes that Denofrio's unlawful conduct occurred before, during, and after the circulation of the petition, and Arnold Blackstone's testimony discloses that the Respondent's conduct was closely associated with the inception of the petition, I further find that the petition was born, and the Respondent's doubts about the Union's majority status were raised, in the context of unfair labor practices, and thus the Respondent violated Section 8(a)(5) and (1) of the Act when it rejected further bargaining with the Union in its letter of July 17. It therefore follows that the Respondent further violated Section 8(a)(5) and (1) on October 1 when it unilaterally announced and implemented a dental plan, personal days off based on length of employment, a 7-1/2-percent pay raise, a system of merit raises, a credit union, and a profit-sharing plan, all without notice to and bargaining with the Union.

[8] *Dayton Blueprint Co.*, 193 NLRB 1100, 1107 (1971); *The Powers Regulator Co.*, 149 NLRB 1185, 1188 (1964); *Hy Plains Dressed Beef*, 146 NLRB 1253, 1254 (1964). See also *Roman Catholic Diocese of Brooklyn*, 222 NLRB 1052, 1054 (1976), sub nom. *Nazareth Regional High School v. NLRB*, 549 F.2d 873 (2d Cir. 1977).

CONCLUSIONS OF LAW

1. The Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. By interrogating employees concerning their union sympathies and desires, by promising employees money and benefits in order to undermine the Union and induce employees to abandon the Union, and by otherwise disparaging the Union to employees in an effort to induce them to reject the Union by signing an employee petition disavowing the Union's representation, the Respondent interfered with, restrained, and coerced employees in violation of Section 8(a)(1) of the Act.

4. By refusing to meet and bargain with the Union on July 17 and thereafter, in the context of the Respondent's conduct described in paragraph 3 of this section, and by announcing and implementing unilateral changes in wages, hours, and working conditions, specifically: a dental plan, personal days off based on length of employment, a 7-1/2-percent pay raise, a merit system of raises, a credit union, and a profit-sharing plan, the Respondent violated Section 8(a)(1) and (5) of the Act.

5. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find it necessary to order that the Respondent cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act. Having found that the Respondent has refused to bargain collectively in good faith with the Union as the exclusive representative of the employees in the appropriate unit described herein, I shall order the Respondent to recognize and, upon request, bargain with the Union as the exclusive representative of the employees in the appropriate unit and, if an understanding is reached, embody such understanding in a signed agreement. The Respondent shall also, if the Union requests, rescind the unlawful unilateral changes in wages, hours, and working conditions listed in paragraph 4 of the section of this Decision entitled "Conclusions of Law," provided, however, that nothing contained herein shall be construed as requiring the Respondent to revoke any wage increases or other benefits the Respondent has heretofore granted.

Because the character of the Respondent's unfair labor practices was clearly directed toward the destruction of the entire collective-bargaining relationship, I find a broad cease-and-desist order is necessary. In addition, the Respondent will be ordered to post an appropriate notice encompassing all violations committed.

[Recommended Order omitted from publication.]